

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>DENNIS ALLEN, et al.</b>	:	
	:	Case No. C-1-01-159
<b>Plaintiffs</b>	:	
	:	Judge Herman S. Weber
<b>v.</b>	:	
	:	Magistrate Judge Timothy S. Hogan
<b>JOHN CRARY, et al.</b>	:	
	:	
<b>Defendant/ Third-Party Plaintiff</b>	:	<b>THIRD-PARTY DEFENDANTS POLLY JONES AND SHIRLEY MONROE S EXPEDITED MOTION TO CONTINUE THE DISPOSITIVE MOTIONS DEADLINE ON THIRD-PARTY CLAIMS ONLY</b>
	:	
<b>v.</b>	:	
	:	
<b>POLLY JONES, et al.</b>	:	
	:	
<b>Third-Party Defendants</b>	:	
	:	

Third-PartyThird-Party Defendants,Third-Party Defendants, PollyThird-Party Defendants, Polly  
and through counsel, move theand through counsel, move the Court to continue the dispositive motion  
withwith respect to the pending third-party claims against Jonewith respect to the pending third-pa  
DefendantDefendant John Crary. The purpose of thisDefendant John Crary. The purpose of this conti  
onon the pending motion to dismisson the pending motion to dismiss filed byon the pending motion to dis  
motionmotion for summary judgment deadlinemotion for summary judgment deadline is currently set fo  
havehave sought this continuance on have sought this continuance on an expeditedhave sought  
7.1(b)(3).7.1(b)(3). If the Court7.1(b)(3). If the Court permits Crary to respond to the instant motion in  
pursuantpursuant pursuant to S.D. Ohio Cpursuant to S.D. Ohio Civ. R. 7.2, this motion will be ren  
denieddenied the undersigndenied the undersigned s denied the undersigned s request for a Rule 1  
accordingly seek a hearing MEMORANDUM IN SUPPORT its first convenience.

TenTen months after beingTen months after being named a deTen months after being nar

Retirement Retirement Income Security Retirement Income Security Act Retirement Income Security Act  
 aa Third-Party Third-Party Complaint for Indemnity against Shirley Monroe ( Monroe ),  
 ( Jones ) ( Jones ) and James Thelan on April 16, 2003. Jones and Monroe responded ( Jones ) and J  
 motion motion to dismiss these motion to dismiss these claims pursuant to Fed. R. Civ. Pro. 12(b)(6). As e  
 supporting supporting memorandum, a plan supporting memorandum, a plan fiduciary cannot, as a m  
 ERISA by asserting third-party indemnity claims against other alleged plan fiduciaries.

Following Following the filing of Jones s and Monroe s motion to d Following the filing of  
 completed completed discovery on September 15. Unfortunately, with the deadline fo completed disc  
 motions motions fast-approaching on Octob motions fast-approaching on October 15, motions fast-ap  
 dismiss dismiss Crary s third-party complaint. dismiss Crary s third-party complaint. Jones and Monroe s  
 giv given an opportunity to rule on their motion to dismiss before entertaining a motion for  
 summary summary judgment on the summary judgment on these part summary judgment on these  
 request request that the deadline for filing a motion for summary judgment, only only with respect to only v  
third-party third-party claims asserted by Crary, be continued until such time , be continued until such  
 Jones s and Monroe s motion to dismiss.

A proposed Order is tendered herewith.

Respectfully submitted,

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Stephen A. Simon (Ohio Bar #0068268)  
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Trial Attorneys for Third-Party Defendants,  
Shirley Monroe and Polly Jones

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following by facsimile to Paul D. Marotta, and U.S. regular mail, postage prepaid, on September 26, 2003:

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Of Counsel for Defendant Crary\_\_

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ATTORNEY FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT  
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<b>DENNIS ALLEN, et al.</b>	:	
	:	Case No. C-1-01-159
<b>Plaintiffs</b>	:	
	:	Judge Herman S. Weber
<b>v.</b>	:	
	:	Magistrate Judge Timothy S. Hogan
<b>JOHN CRARY, et al.</b>	:	
	:	
<b>Defendant/ Third-Party Plaintiff</b>	:	<b>ORDER GRANTING</b>
	:	<b>THIRD-PARTY DEFENDANTS</b>
<b>v.</b>	:	<b>POLLY JONES AND SHIRLEY</b>
	:	<b>MONROE S EXPEDITED</b>
	:	<b>MOTION TO CONTINUE THE</b>
<b>POLLY JONES, et al.</b>	:	<b>DISPOSITIVE MOTIONS</b>
	:	<b>DEADLINE ON THIRD-PARTY</b>
<b>Third-Party Defendants</b>	:	<b>CLAIMS ONLY</b>
	:	

Upon the Expedited Motion of Third-Party Defendants, Shirley Monroe and Upon the Expedited Motion of Third-Party Defendants, Shirley Monroe and Polly Jones, Everett W. Whisman, et al. ( Plaintiffs ), to Continue tJones, Everett W. Whisman, et al. ( Plaintiffs ), to Continue tDeadline Deadline on Third-Party Claims Only, having fully considered the matter and the argument of counsel for the parties;

The Court GRANTS this Motion.

IT IS HEREBY ORDERED that the deadline for filing dispositive motions with respect to third-party claims asserted by Defendant John Crary, shall be indefinitely continued until such time as the Court decides whether to continue or dismiss Crary's Third-Party Complaint for Failure to State a Claim.

SO ORDERED this \_\_\_\_\_ day of September, 2003.

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Timothy S. Hogan  
United States Magistrate Judge

Tendered by:

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